

Section-by-Section of H.R. 5825

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Section 2 – Definitions – Largely unchanged from the original Wilson bill and as passed by both committees. Contains problematic definitions:

Agent of a foreign power – dramatically expands the definition to include any person who has any control or possession of foreign intelligence information – even if they are unwitting or innocent. This affects the application of other important provisions. Could sweep in journalists and foreign workers of high-tech companies.

Electronic surveillance – radically expands the universe of warrantless surveillance. No warrant will be required for any call that begins or ends outside the United States, notwithstanding that an innocent American is on the line.

Minimization Procedures – drastically amends existing definition in manner that will permit government to retain indefinitely information collected on Americans. Current law requires destruction after 72 hours unless there is threat of death or bodily injury.

Surveillance Device – Authorizes far-reaching data-mining operations by creating new term that is any “device that allows surveillance by the Federal Government, but excludes any device that extracts or analyzes information from data that has already been acquired by the Federal Government by lawful means.” From Intelligence bill.

Section 3 – Authorization for Electronic Surveillance – Modifies a section of FISA that allows warrantless surveillance of Americans for one year if the AG certifies that the surveillance is directed at a foreign power or agent of a foreign power. Removes FISA’s requirement that the AG certify that there is no substantial likelihood that a U.S. person will be a subject of that surveillance. Contains extensive provisions mandating cooperation from telecommunications companies in records requests in response to a directive from the AG. Allows for limited judicial process to challenge AG directive.

Section 4 – Jurisdiction – technical changes to court jurisdiction. From Judiciary bill.

Section 5 – Applications for Orders – Eliminates certain disclosure requirements from the warrant application to streamline the warrant process. From Judiciary bill.

Section 6 – Issuance of an Order – Allows for emergency surveillance to begin before warrant is obtained for seven days (current law is three days). Requires FISA judge to authorize a pen register/trap and trace surveillance whenever a FISA warrant is granted, even if the government did not seek a pen register/trap and trace order. From Judiciary bill.

Section 7 – Use of Information – Allows the government to maintain unintentionally acquired communications of Americans if they contain significant foreign intelligence information. Current law requires destruction unless communications indicate threat of serious bodily injury

or harm.

Section 8 – Congressional Oversight – Gives the Chair of HPSCI the discretion to decide with whom to share intelligence information where no such discretion existed previously. From Intelligence bill.

Section 9 – International Movement of Targets – FISA search and surveillance warrants remain in force even if the target leaves the United States. From Judiciary bill.

Section 10 – Compliance with Antiterrorism Programs – A court-stripping provision that precludes any court from hearing any case or imposing any civil or criminal liability regarding abuse of any intelligence program. This would effectively dismiss all pending challenges to the President's warrantless surveillance program, including an action in Detroit finding the program to be unconstitutional, as well as insulating all officials from any intentional wrongdoing. Related to Cannon amendment in Judiciary bill.

Section 11 – Minimization – Requires report to Intelligence Committee on effectiveness and use of minimization procedures at NSA. From Judiciary bill.

Section 12 – Armed Attack – After an armed attack on the United States, President may conduct unlimited warrantless surveillance or physical search for a period of 90 days. Armed attack is not defined. From Intelligence bill.

Section 13 – Terrorist Attack – After a terrorist attack on the United States, President may conduct unlimited warrantless surveillance for a period of 90 days, which is indefinitely renewable. Terrorist attack is not defined. From Intelligence bill.

Section 14 – Imminent Threat – In anticipation of an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States, President may conduct unlimited warrantless surveillance for a period of 90 days, which is indefinitely renewable. From Intelligence bill.